IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1506 of 2006
To
FIRST APPEAL No. 1516 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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EXECUTIVE ENGINEER & 1 - Appellant(s)
Versus
THAKOR SATUJI GHEMARJI - Defendant(s)

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Appearance :
Ms.Bhavika Kotecha, learned Assistant Government Pleader for appellants in First Appeal Nos.1506 to 1509 of 2006

Mr.Pathik Acharya, learned Assistant Government Pleader for appellants in First Appeal Nos.1510 to 1513 of 2006

Mr.J.K.Shah, learned Assistant Government Pleader for

appellants in First Appeal Nos.1514 to 1516 of 2006
MR H.S.MULIA for Defendant(s) : 1,
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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 04/07/2007

COMMON ORAL JUDGMENT

(Per : HON'BLE SMT. JUSTICE ABHILASHA KUMARI)

1. By filing these appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short) read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged legality of common judgment and award dated September 2, 2005, rendered by the learned Principal Senior Civil Judge, Mehsana in Land Reference Case Nos. 947 to 957 of 2003, by which the claimants have been awarded additional amount of compensation at the rate of Rs.171.05 Ps. per sq.mt. for their acquired lands, in addition to compensation offered to them at the rate of Rs.8.95 Ps. per sq.mt. by the Special Land Acquisition Officer vide award dated February 13,2003.

2. The Executive Engineer, Dharoi Canal Scheme No.3, Visnagar proposed to the State Government to acquire the lands of village Vishol, Taluka Unjha, District Mehsana for the public purpose of construction of a canal under Dharoi Canal Project. On perusal of the same, the State Government was satisfied that the lands mentioned therein were likely to be needed for the said public purpose. Therefore, a Notification under Section 4(1) of the Act was issued which was published in the Official Gazette on August 27,2002. The owners of the lands were served with notices as required by Section 4 of the Act and an inquiry was conducted. On conclusion of inquiry, a report as contemplated by Section 5A(2) of the Act was forwarded by the Special Land Acquisition Officer to the State Government. On consideration of the same, the State Government was satisfied that the lands of village Vishol, specified in the Notification published under Section 4 of the Act, were needed for the public purpose of construction of canal under the Dharoi Canal Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the Official Gazette on December 26, 2002. The

interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.500/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.8.95 Ps. per per sq.mt. by his award dated February 13,2003. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, references were made to the District Court,Mehsana, where they were registered as noticed earlier.

3. On behalf of the claimants, witness Satuji Ghemarji was examined at Exh.26. After giving particulars of the lands acquired, the witness mentioned that all the lands were fertile as a result of which each claimant was able to raise crops of

cumin seeds, spogel seeds, fennels, cotton, wheat etc. during the winter whereas each claimant was able to raise crops of millet,Juwar, pioneer, etc during summer and each claimant was able raise crops of millet, cotton, fennel, Juwar, Tuwar, etc. during monsoon. The witness maintained that each claimant was able to earn substantial income from the sale of different agricultural produces. After mentioning the pattern of crop, the said witness stated that the land is situated just near the village. He has stated that, the market price of the land before 10 years was more than Rs.2 lacs per Vigha. He has stated that at the time of acquisition usual sale transactions were at the rate of Rs.4 to 5 lacs per Vigha of land. However, so as to reduce the expenses, the sale-deeds bear lesser amount. The witness mentioned before the Court that his village is just situated adjacent to Unjha. He has stated that the lands of both the places bear the same fertility. He has stated that his village is situated at a distance of 20 Kms. from Mehsana and the village consists of the population approximately about 6,000 people. He has further stated that his village consists of Panchayat House, two Bus-stations, a Primary School, two Bal-mandirs,

two Anganwadis, Temple of Oganat Mahadev etc. He has further stated that M.D.R. Road from Brahmanwada to Patan passes through his village, a road from Patan to Unjha passes through the village and that Patan city is situated near his village. He has further stated that the nearby villages i.e. Unjha, Varvada, Maktupur, Brahmanwada, Chandalaj, Nedra are linked by Pakka roads. He has further stated that the village is developed, consisting of various factories, shops, hospital etc. He has stated that his village is covered under “Jyoti Gram Yojna” and day by day is developing. The witness produced Certificate issued by Talati-cum-Mantri of Vishol Gram Panchayat at Mark 5/2. In order to substantiate his claim that the boundaries of both the villages were touching each other, the witness produced village Map at Exh.38. The witness informed the court that earlier the lands of village Unjha were acquired for construction of Canal under Sipu Project and that the Reference Court had awarded higher compensation as a result of which on the basis of said award, they were entitled to enhanced compensation. The witness produced previous award of the Reference Court relating to the lands of village Unjha at Exh.25.

Though this witness was cross-examined by the learned counsel for the acquiring authorities, nothing substantial could be elicited nor the assertion made by the witness that lands which were acquired from village Unjha were similar in all respects, including fertility, to the lands acquired in the instant cases, could be demonstrated to be untrue.

4. On behalf of the acquiring authorities witness Rameshchandra Amarsinbhai Thakkar was examined at Exh.27. According to him all the relevant materials were taken into consideration by the Special Land Acquisition Officer while making award under section 11 of the Act and, therefore, the claimants were not entitled to enhanced compensation. However, in his cross-examination, the witness had to admit that he had no personal knowledge about the proceedings which were initiated for acquiring the lands in the instant cases and was deposing before the court on the basis of official record made available to him.

5. It may be mentioned that the acquiring body had

produced certain extracts indicating sale of lands of village Vishol alongwith list at Exh.10 and 24.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the opinion that previous award of the Reference Court, relating to the lands of village Unjha, was a relevant piece of evidence and furnished good guidance for the purpose of determining market value of the lands acquired in the instant case. The Reference Court noticed that Notification under Section 4(1) of the Act was published in the official gazette on March 15, 1992 for the purpose of acquiring the lands of village Unjha whereas in the instant case notification under section 4 of the Act was published in the official Gazette on August 27,2002 and, therefore, in view of gap of time between the two, the claimants were entitled to the benefit of rise in prices of lands not at the rate of 10% per annum but lumpsum at the rate of 25% per annum. In the ultimate analysis, the Reference Court had awarded additional amount of compensation to the claimants at the rate of Rs.171.05 Ps. per sq.mt. for their acquired lands by the impugned common award, giving rise to the instant

appeals.

7. This Court has heard Ms.Bhavika Kotecha, Mr.Pathik Acharya and Mr.J.K.Shah, learned Assistant Government Pleaders for the appellants and Mr.H.S.Mulia, learned counsel for the claimant/claimants in each appeal at length and in great detail. This court has also considered the paper book supplied by the learned counsels for the appellants, which includes all the documentary as well as oral evidence adduced by the parties before the Reference Court.

8. It is true that the claimants could not make good their assertion that they were earning substantial income from the sale of different agricultural produces. However, the said fact is of no consequence inasmuch as enhanced compensation was never claimed on yield basis. The record does not indicate that enhanced compensation was also claimed on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Unjha, which was produced at Exh.25. A bare perusal of Exh.25 makes it

evident that pursuant to publication of Notification in the Official Gazette on March 15,1992 lands of village Unjha were acquired for the public purpose of construction of a canal under Dharoi Project therein the Special Land Acquisition Officer by his award dated September 20, 1995, had offered compensation to the claimants at the rate of Rs.8/- per sq.mt. for irrigated lands and Rs.6/- per sq.mt. for non-irrigated lands. Feeling aggrieved, the claimants had sought references. Accordingly references were made to the District Court, Mehsana where they were numbered as Land Acquisition Reference No.248 of 1997 to 350 of 1997. In those cases, witness Gopalbhai Prabhudas Patel was examined at Exh.18 whereas not an iota of evidence was led on behalf of the acquiring authorities. The claimants in those cases had relied upon two previous awards of the Reference Court relating to the lands of village Unjha itself and after relying upon Exh.11, the Reference Court by common judgment and award dated August 13,2003 awarded compensation to the claimants at the rate of Rs.231/- per sq.mt.

9. Here in this case the acquiring authorities had

relied upon Map prepared by the Executive Engineer, Dharoi Canal Dn.No.8, Visnagar to indicate that the distance between village Vishol and village Unjha was 7.25 Kms. The evidence of the witness examined by the claimants makes it more than clear that several industrial units, market yards, banks, etc. were situated in village Unava. The Reference Court, without assigning good reasons, has not exhibited this document, which is a relevant piece of evidence. Therefore, the same is ordered to be exhibited and given Exhibit No.41A.

10. The relevancy of the previous award of the Reference Court relating to lands of village Unjha stands satisfactorily established by reliable testimony of the witness examined on behalf of the claimants. Further, the certificate which is ordered to be exhibited by this Court indicates that the distance between Vishol and Unjha is 7.25 Kms. It is well settled principle of law that previous award of the Reference Court relating to a village, which has attained finality, can be relied upon as a good piece of evidence for the purpose of determining the market value of similar lands acquired subsequently from

the adjoining village. As observed earlier, it is satisfactorily established by the claimants that the lands which were previously acquired from village Unjha were similar in all respects to the lands acquired from village Vishol. It may be mentioned that previous award of the Reference Court relating to the lands of village Unjha rendered in Land Acquisition Reference No.248 of 1997 to 350 of 1997 was challenged before the High Court in First Appeal Nos.2147 to 2249 of 2004 and those appeals have been dismissed by the court vide judgment dated July 2,2007. Thus, the previous award of the Reference Court relating to the lands of village Unjha has attained finality. Under the circumstances, this Court is of the opinion that the Reference Court did not commit any error in placing reliance upon previous award of the Reference Court relating to the lands of village Unjha for the purpose of determining market value of the lands acquired in the instant case. The amount of compensation awarded by the Reference Court in these cases is not on higher side so as to warrant interference by this court in the instant appeals. On re-appreciation of evidence adduced by the parties before the Reference Court, this Court is of the

opinion that correct findings of facts have been recorded by the Reference Court to which well settled principles of law have been applied. The learned counsels for the appellants could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Thus, the appeals, which lack merits, deserve dismissal.

11. For the foregoing reasons, the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(J.M.Panchal,J)

(Smt.Abhilasha Kumari,J)

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